

1 WILLIAM D. WICK (State Bar No. 063462)
JON K. WACTOR (State Bar No. 141566)
2 ANNA L. NGUYEN (State Bar. No. 226829)
WACTOR & WICK LLP
3 180 Grand Avenue, Suite 950
Oakland CA 94612-3572
4 Telephone: (510) 465-5750
Facsimile: (510) 465-5697
5
6 Attorneys for Plaintiffs
Virginia Pellegrini and
Virginia Pellegrini, Trustees
7 of the Mario J. and Virginia E. Pellegrini Trust

8
9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12 VIRGINIA PELLEGRINI, Trustee of the
13 Mario J. and Virginia E. Pellegrini Trust,
and VIRGINIA PELLEGRINI, an
14 individual,

15 Plaintiffs,

16 v.

17 TECHNICHEM, INC., a California
corporation, MARK J. NG, an individual;
18 STEPHEN S. TUNG, an individual;

19 Defendants.

Case No. 07-CV-02497-CRB

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' *EX PARTE*
APPLICATION TO CONTINUE CASE
MANAGEMENT CONFERENCE**

20
21 **INTRODUCTION**

22 The *purpose* of the civil case management system is to achieve the prompt and
23 fair disposal of civil cases. Defendants Techichem, Inc., Mark Ng, and Stephen Tung
24 ("Defendants") have filed an eleventh-hour *ex parte* application to continue the initial
25 Case Management Conference, which has been set for Friday, October 5, 2007 for more
26 than three months, because one of the lawyers in Defendants' law firm is out of the
27 country. A delay at this late date is unwarranted and unnecessary. Defendants' law firm
28 has more than one lawyer working on this case, and one of those lawyers can attend.

1 Plaintiff Virginia Pellegrini is an elderly woman and recent widow, who seeks
 2 prompt resolution of this matter without unnecessary delay. The October 5, 2007 Case
 3 Management Conference has been on calendar since June 4, 2007. Although the court
 4 changed the time from 8:30 am to 1:30 pm, Defendants received at least 30 day notice
 5 of this time change to make the necessary arrangements for attendance by counsel.
 6 Moreover, Defendants are represented by Gordon and Rees, a large firm (consisting of
 7 more than 320 attorneys) with ample resources to allow attendance by counsel at the
 8 scheduled October 5 Case Management Conference.

9 For these reasons, the Case Management Conference should remain on calendar
 10 for October 5, 2007, and Defendants' *ex parte* application should be DENIED.

12 **STATEMENT OF FACTS**

13 1. Plaintiffs filed this action for cost recovery, contribution, injunctive relief,
 14 declaratory relief, and damages on May 9, 2007.

15 2. William D. Wick and Anna L. Nguyen of Wactor & Wick LLP are counsel of
 16 record for Plaintiffs Virginia Pellegrini, Trustee of the Mario J. and Virginia E. Pellegrini
 17 Trust, and Virginia Pellegrini, an individual (collectively, "Plaintiffs").

18 3. Brian M. Ledger and Paul A. Henreid of Gordon and Rees are counsel of
 19 record for Defendants.

20 4. On June 4, 2007, the Court scheduled the initial case management
 21 conference for Friday, October 5, 2007 at 8:30 a.m.

22 5. On September 5, 2007, the Court notified the parties that the Court had
 23 rescheduled the time of the initial case management conference currently on calendar for
 24 8:30 am on October 5, 2007 to 1:30 p.m. that same day.

25 6. On or about September 20, 2007, defense counsel Paul Henreid discussed
 26 the possibility of a stipulation to continue the Case Management Conference due to a
 27 scheduling conflict with Mr. Brian Ledger. To accommodate Mr. Ledger, Plaintiffs'
 28 counsel Anna Nguyen suggested several options, including: (1) the Case Management

1 Conference take place at an earlier time, (2) the Case Management Conference be
2 rescheduled within a week of the initial October 5, 2007 date, (3) Mr. Ledger attend
3 telephonically, or (4) Mr. Henreid or any other attorney at his 320 lawyer firm attend the
4 Case Management Conference.

5 7. Defense counsel Paul Henreid rejected all of these options and maintained
6 that the Case Management Conference could not take place any earlier than November
7 2, 2007. Mr. Henreid provided no explanation as to why he could not attend the Case
8 Management Conference in lieu of Mr. Ledger.

9 8. On September 27, 2007, Plaintiffs' counsel notified Mr. Henreid of Plaintiffs'
10 intent to oppose an *ex parte* for a continuance of the Case Management Conference for
11 the following reasons: (a) Plaintiff Mrs. Virginia Pellegrini is an elderly woman and recent
12 widow who seeks prompt resolution of this case; (b) Defense counsel had adequate
13 notice of the time and date of the currently scheduled Case Management Conference,
14 and (c) Gordon and Rees may substitute any attorney, including Mr. Henreid himself, for
15 Mr. Ledger to avoid delaying the litigation.

16 9. On October 1, 2007, Defendants' filed an *ex parte application* to continue
17 the Case Management Conference at issue here.

18 LEGAL STANDARD

19 *Ex parte* relief constitutes emergency relief and will not be granted unless the
20 declaration accompanying the application demonstrates good cause for relief.
21 *Mission Power Eng. Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal.
22 1995). *Ex parte* applications should only be granted when the evidence shows: (1) that
23 the moving party's cause will be irreparably prejudiced if the underlying motion is heard
24 according to regular noticed motion procedures; and (2) the moving party is without fault
25 in creating the crisis that requires *ex parte*." *Id.*; see also *In re Intermagnetics America,*
26 *Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989). This Court's Standing Order discourages
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1 changes in the Court's schedule except "by signed order of the Court and only upon a
2 showing of good cause." Judge Charles Breyer's Standing Orders, June 30, 2004, ¶ 4.

3 4 ARGUMENT

5 6 **1. Defendants Failed to Show "Good Cause" for a Continuance of the Case** 7 **Management Conference for Additional Three Weeks.**

8 Defendants represent that "good cause" exists to continue the case management
9 conference for an additional 21 days because one of the handling attorneys, namely
10 Brian Ledger, is unable to attend due to his vacation schedule. However, Mr. Ledger's
11 representations that he cannot personally attend the CMC do not constitute "good cause"
12 to warrant a continuance. The fact that Defendants had adequate notice of the time
13 change, additional defense attorneys are available to attend the Case Management
14 Conference, and the Case Management Conference is to be held on Friday, October 5,
15 2007 demonstrates that there is no reason to delay the currently scheduled Case
16 Management Conference.

17 Defendants assert that "It is important that lead trial counsel attend the initial
18 CMC." *Ex Parte* Application, Decl. of Brian Ledger, ¶ 11. Yet, Defendants characterize
19 the Case Management Conference as "a minor procedural issue." [*Ex Parte Application*,
20 2: 28- 3:1]. Defendants also *never* explain why Mr. Paul Henreid or any other attorney
21 from Gordon and Rees cannot attend the Case Management Conference in Mr. Ledger's
22 absence. Gordon and Rees, is a large firm consisting of over 320 attorneys, which allows
23 adequate resources to send competent counsel to the CMC.

24 Furthermore, the Court provided the parties with at least 30 days' notice of the
25 time change. Defendants have not offered a reasonable explanation for the
26 extraordinary lapse between the time-change notice and the filing of this *ex parte*
27 application now before the Court. Defendants had ample time within which to designate
28 an alternate attorney to attend the Case Management Conference in Mr. Ledger's

1 absence or to raise the issue with the Court to allow for rescheduling of the Case
 2 Management Conference prior to Mr. Ledger's vacation. Thus, Defendants fail to show
 3 good cause and the court should deny the request for the extension.

4
 5 **2. Plaintiffs Suffer Prejudice from a Delay in the Case Management**
 6 **Conference.**

7 Defendants argue that a continuance of the CMC will not cause any prejudice to
 8 Plaintiffs because (1) the 21 day delay is not lengthy, (2) the extension does not delay or
 9 impact any trial, pre-trial, or discovery dates in the Joint Case Management Conference
 10 Statement, and (3) Plaintiffs' counsel had not indicated any conflict with a continuance of
 11 the hearing. [*Ex Parte Application*, 3: 13-16]. All three arguments are demonstrably
 12 false.

13 Contrary to Defendants' position, Plaintiffs stand to suffer prejudice from a delay
 14 in the case. Plaintiff Mrs. Virginia Pellegrini is an elderly woman and recent widow. In
 15 fact, her husband Mr. Mario J. Pellegrini passed away one week before the Complaint in
 16 this action was filed. Due to her age and health, Mrs. Pellegrini greatly desires that this
 17 action proceed expeditiously and has requested that all delays be avoided.

18 In addition, this 21-day delay has rippling effects on the procedural timelines in
 19 this case. The Joint CMC Statement currently proposes conflicting deadlines, which must
 20 be resolved by the Court. Consequently, a 21-day delay of the Case Management
 21 Conference prevents the Court from setting a trial date and establishing pre-trial
 22 deadlines. Any procedural deadlines will be pushed out for at least an additional 21-days
 23 if the CMC is continued.

24 Lastly, Plaintiffs' counsel did not state that no scheduling conflict occurred if the
 25 CMC was rescheduled to October 26, 2007 as Defendants propose. In fact, Plaintiffs'
 26 counsel *do* have a conflict. [See Declaration of Anna L. Nguyen]. Plaintiffs' counsel has
 27 another CMC in the Superior Court of California, Contra Costa County in Martinez,
 28 California on October 26, 2007. Therefore, the Case Management Conference cannot be

1 held on October 26, 2007 as Defendants propose, which will result in at least a 30 day
2 delay to allow re-scheduling of the CMC.

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4 **CONCLUSION**

5 For the foregoing reasons, Plaintiffs respectfully request that the Court deny
6 Defendants' *ex parte* application in its entirety and conduct the Case Management
7 Conference as currently scheduled on October 5, 2007 at 1:30 pm.

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10 Dated: October 1, 2007

WACTOR & WICK LLP

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12 By: /s/ William D. Wick
13 WILLIAM D. WICK
14 ANNA L. NGUYEN
15 Attorneys for Plaintiffs
16 Virginia Pellegrini, and
17 Virginia Pellegrini, Trustee of the Mario J.
18 and Virginia E. Pellegrini Trust
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DECLARATION OF ANNA L. NGUYEN

I, Anna L. Nguyen, declare as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California. I am an associate at the law firm of Wactor & Wick LLP, the attorneys of record for Plaintiffs Virginia Pellegrini and Virginia Pellegrini, Trustee of the Mario J. and Virginia E. Pellegrini Trust ("Plaintiffs"). If called and sworn as a witness, I could competently testify to the matters stated in this declaration as being true and correct, based upon my personal knowledge of such matters.

2. I make this declaration in support of Plaintiffs Opposition to Defendants' *Ex Parte* Application to Continue Case Management Conference.

3. On or about September 20, 2007, defense counsel Paul Henreid requested that Plaintiffs stipulate to a 30-day extension of the October 5, 2007 Case Management Conference due to Mr. Brian Ledger's inability to attend personally. In an attempt to meet and confer on this issue of a continuance, I suggested that: (1) the Case Management Conference take place at an earlier time, (2) the Case Management Conference be rescheduled within a week of the initial October 5, 2007 date, (3) Mr. Ledger attend telephonically, or (4) Mr. Henreid or any other attorney attend the Case Management Conference. Defense counsel Paul Henreid rejected all of these options and maintained that the Case Management Conference could not take place any earlier than November 2, 2007. Mr. Henreid provided no explanation as to why he could not attend the Case Management Conference in lieu of Mr. Ledger.

4. On September 27, 2007, Paul Henreid notified me that Defendants planned to file an *ex parte* application on Friday, September 28, 2007 to continue the CMC until November 2, 2007.

5. On September 27, 2007, I informed Mr. Henreid of Plaintiffs' intent to oppose any *ex parte* application for the following reasons: (a) Plaintiff Mrs. Virginia Pellegrini is an elderly woman and recent widow who seeks prompt resolution of this

1 case; (b) Defense counsel had adequate notice of the time and date of the currently
2 scheduled Case Management Conference, and (c) Gordon and Rees may substitute any
3 attorney, including Mr. Henreid himself, for Mr. Ledger to avoid delaying the litigation.
4 [See email from Anna L. Nguyen to Paul Henreid dated September 27, 2007, attached as
5 Exhibit A hereto].

6 6. On September 28, 2007, Paul Henreid proposed October 26, 2007 as a
7 possible date to reschedule the Case Management Conference.

8 7. Plaintiffs' counsel currently has a Case Management Conference in Contra
9 Costa County Superior Court in Martinez, California and therefore have a scheduling
10 conflict with the proposed October 26, 2007 date.

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13 Dated: October 1, 2007

/s/ Anna L. Nguyen

14 Anna L. Nguyen
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ORDER

Having reviewed Defendants' *Ex Parte* Application to Continue Case Management Conference and all opposition papers, and good cause appearing,

IT IS HEREBY ORDERED THAT:

Defendants' *ex parte* application is DENIED. The Case Management Conference remains on calendar as currently scheduled on October 5, 2007 at 1:30 pm.

DATED: _____

Honorable Charles R. Breyer
U.S. DISTRICT JUDGE